IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 779 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
KARMANBHAI SURTANBHAI DESAI - Opponent(s)

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Appearance :
Mr.S.P.Hasurkar, APP for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1. This appeal is directed against the judgment and order passed by learned Judicial Magistrate, First Class, Harij in Criminal Case No.308 of 1992

dated 22.3.1996 whereby the respondent was acquitted of the offence alleged under Sections 379 and 39 of the Electricity Act against him.

2. The prosecution case, in nutshell, was that on 14.5.1992 at about 2.30, the Dy.Engineer along with his team visited the residential premises of the respondent and at that time it was found that the wire was taken from the main line of the electricity and electricity supply was taken to his residential premises without authorization. Accordingly a complaint came to be filed.

3. The trial Court, after examining the evidence on record, has acquitted the accused on the ground that the prosecution has failed to prove the ownership or possession of the respondent of the premises and has also failed to examine independent witnesses. Over and above, the trial Court has also given the benefit of doubt to the accused in view of contradiction between two witnesses being Rajendra Kumar Gangaram Exh.16 and Jentibhai Bhavsangbhai Thakore Exh.17.

4. The scope and power of the appellate court to interfere in appeal against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by

some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. Para 16 of the said decision reads as under:

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the Court below. However,the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

5.1. I have heard learned Advocates for the respective parties. As a result of hearing and perusal of the record, it is found that no error apparent on the face of the record or any illegality is committed by the trial Court while passing the impugned order. In that view of the matter, the trial Court was justified in giving benefit of doubt to the

respondent accused. In fact the prosecution has failed to prove the case against the respondent.

5.2. There is nothing on record to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

6. In the result, the appeal is required to be dismissed and is accordingly dismissed.

[K.S. JHAVERI, J.]

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